

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|---------------------------|--|---|--|
| Investigator: Charlie Hartford | Team: Squad #8 | CCRB Case #: 201810441 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Sunday, 12/09/2018 9:52 PM | Location of Incident: [REDACTED] | Precinct: 103 | 18 Mo. SOL 6/9/2020 | EO SOL 1/24/2021 | |
| Date/Time CV Reported Sun, 12/09/2018 11:15 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 12/17/2018 11:05 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Daniel Efinger | 16366 | 957561 | 103 PCT |
| 2. POM Kevin Gwinn | 14299 | 956711 | 103 PCT |
| 3. POM Daniel Ohman | 10320 | 961032 | 103 PCT |
| 4. SGT Brian Lee | 03936 | 951904 | 103 PCT |
| 5. Officers | | | |
| 6. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM Erick Harsch | 30956 | 956722 | 103 PCT |
| 2. POM Khrihan Jainaraine | 15624 | 960718 | 103 PCT |
| 3. POF Theresa Martorano | 09408 | 960895 | 103 PCT |
| 4. POM Jared Fink | 11309 | 950413 | 103 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A. An officer | Force: At § 87(2)(b) in Queens, an officer used physical force against § 87(2)(b) | [REDACTED] |
| B. POM Kevin Gwinn | Force: At § 87(2)(b) in Queens, Police Officer Kevin Gwinn used physical force against § 87(2)(b) | [REDACTED] |
| C. POM Daniel Ohman | Force: At § 87(2)(b) in Queens, Police Officer Daniel Ohman used physical force against § 87(2)(b) | [REDACTED] |
| D. POM Daniel Ohman | Force: At § 87(2)(b) in Queens, Police Officer Daniel Ohman used physical force against § 87(2)(b) | [REDACTED] |
| E. POM Daniel Efinger | Force: At § 87(2)(b) in Queens, Police Officer Daniel Efinger used physical force against § 87(2)(b) | [REDACTED] |
| F. Officers | Discourtesy: At the 115th Precinct stationhouse, officers spoke discourteously to § 87(2)(b) | [REDACTED] |
| G. POM Kevin Gwinn | Discourtesy: At § 87(2)(b) in Queens, Police Officer Kevin Gwinn spoke discourteously to § 87(2)(b) | [REDACTED] |
| H. SGT Brian Lee | Discourtesy: At the 103rd Precinct stationhouse, Sergeant Brian Lee spoke discourteously to § 87(2)(b) | [REDACTED] |

Case Summary

On December 9, 2018, Sgt. Brian Lee reported this incident to IAB on behalf of § 87(2)(b). On December 17, 2018, this case was received by the CCRB.

On December 9, 2018, at approximately 9:52 p.m., in the vicinity of § 87(2)(b) in Queens, an officer allegedly punched § 87(2)(b) while attempting to place him in handcuffs. (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) attempted to flee while in handcuffs, at which time he was forcibly taken to the ground by Police Officer Kevin Gwinn and Police Officer Daniel Ohman of the 103rd Precinct (**Allegation B and Allegation C: Force**, § 87(2)(g)). Police Officer Daniel Efinger of the 103rd Precinct and PO Ohman allegedly punched and kicked § 87(2)(b) (**Allegation D and Allegation E: Force**, § 87(2)(g)). PO Gwinn and additional unidentified officers spoke discourteously to § 87(2)(b) (**Allegation F and Allegation G: Discourtesy**, § 87(2)(g)).

On December 9, 2018, at approximately 10:08 p.m., at the 103rd Precinct stationhouse, Sergeant Brian Lee of the 103rd Precinct told § 87(2)(b) to “shut the fuck up” (**Allegation H: Discourtesy**, § 87(2)(g)). § 87(2)(b) was arrested during the incident.

This case contains body-worn camera footage (Board Review 01, Board Review 05-15).

Findings and Recommendations

Allegation (A) Force: At § 87(2)(b) in Queens, an officer used physical force against § 87(2)(b)

In his sworn statement to the CCRB, provided January 3, 2019, § 87(2)(b) stated that at approximately 9:52 p.m. on December 9, 2018, he became embroiled in a verbal altercation with his mother, § 87(2)(b) at their residence at § 87(2)(b) in Queens (Board Review 04). The dispute culminated in § 87(2)(b) pushing § 87(2)(b) to the floor. § 87(2)(b) then called 911 and reported that § 87(2)(b) had punched her in the face. Numerous officers responded to the location. After § 87(2)(b) informed the officers that he had shoved his mother to the floor, he decided to leave the residence because he did not wish to answer further questions. As § 87(2)(b) reached his front door, he observed an officer running behind him, at which time § 87(2)(b) began to run as well. § 87(2)(b) gave conflicting accounts during the interview about whether he was already running when he observed the officer behind him.

As § 87(2)(b) ran out onto the street, § 87(2)(b) tripped on the ground, at which time the officer chasing him, identified by the investigation as PO Effinger, tripped over § 87(2)(b) and fell on the ground about two feet past him in the middle of the street. As § 87(2)(b) began to stand up, an officer then arrived and punched § 87(2)(b) four times in his ribs. § 87(2)(b) did not receive any injuries from the punches. Within seconds, additional officers arrived and handcuffed § 87(2)(b).

PO Gwinn provided a statement to the CCRB on March 26, 2019 which was generally consistent with that of § 87(2)(b) (Board Review 27). PO Gwinn stated that as § 87(2)(b) began fleeing his residence, PO Effinger followed him out of the residence, followed by PO Harsch, PO Jainaraine and PO Gwinn, in that order. PO Gwinn observed § 87(2)(b) slip as PO Effinger grabbed ahold of either his shirt or his arm. PO Gwinn stated that PO Effinger did not appear to deliberately bring § 87(2)(b) to the ground. PO Gwinn then attempted to handcuff § 87(2)(b) as § 87(2)(b)

resisted by thrashing his entire body back and forth on the ground, as well as stiffening his body and not allowing PO Gwinn to move his arm. PO Gwinn did not observe an officer punching or otherwise using physical force against § 87(2)(b) as he was being handcuffed.

PO Ohman, PO Jainaraine, and PO Efinger provided testimony to the CCRB which was generally consistent with PO Gwinn's statement (Board Reviews 23-25).

PO Efinger, PO Harsch, PO Gwinn and PO Ohman prepared TRI reports regarding this incident, all of which indicate that no hand strikes were used during the apprehension of § 87(2)(b) (Board Review 49).

This incident is depicted on body-worn camera footage. At 01:52 minutes in PO Gwinn's BWC, § 87(2)(b) is depicted walking towards the front of his residence, then proceeding to run out the door as numerous officers tell him not to leave (Board Review 06). At 02:18 minutes, § 87(2)(b) can be heard asking, "Why are you punching me dude?" The footage is too dark to depict whether officers in fact punch § 87(2)(b) during this time. At 03:35 minutes, § 87(2)(b) is depicted asking which officer punched him, at which time an officer states, "None of us."

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

The Patrol Guide states that the primary duty of all members of service is to protect human life, including the lives of individuals being placed in police custody (Board Review 26). Reasonable force may be used to prevent escape from custody; however, members of service are instructed to use de-escalation techniques to gain voluntary compliance from subjects when appropriate. In determining whether force is reasonable, the Patrol Guide outlines numerous factors to be taken under consideration, including the nature and severity of the crime committed, whether the person is actively resisting being apprehended, and whether the person is attempting to evade arrest by flight.

Active resistance is defined by the Patrol Guide as including both physically evasive movements to defeat a member of service's attempt at control (Board Review 26).

The Patrol Guide outlines three levels of force, and delineates the use of hand strikes as falling under the first and least regulated category (Board Review 26).

§ 87(2)(g)

Allegation (B) Force: At § 87(2)(b) in Queens, Police Officer Kevin Gwinn used physical force against § 87(2)(b)

Allegation (C) Force: At § 87(2)(b) in Queens, Police Officer Daniel Ohman used physical force against § 87(2)(b)

Allegation (D) Force: At § 87(2)(b) in Queens, Police Officer Daniel Ohman used physical force against § 87(2)(b)

Allegation (E) Force: At § 87(2)(b) in Queens, Police Officer Daniel Efinger used physical force against § 87(2)(b)

In his sworn statement, § 87(2)(b) alleged that after he was handcuffed, he was being held by his upper right arm by an officer, identified by the investigation as PO Jainaraine (Board Review 02). § 87(2)(b) then tried to squat down to pick up his belongings, causing PO Jainaraine to fall on top of him. Officers then began to punch and kick § 87(2)(b) tried to cover his face, and as such could not see who was punching and kicking him and could not attribute the kicks and punches to specific officers. § 87(2)(b) received around two kicks and three punches to his back and his side.

PO Gwinn stated during his CCRB interview that as PO Jainaraine was holding § 87(2)(b) he observed § 87(2)(b) thrash his entire body violently from left to right, and then take a couple steps as if he were going to run a second time (Board Review 27). PO Jainaraine lost his grip on § 87(2)(b) and it appeared to PO Gwinn as if § 87(2)(b) was going to get away from PO Jainaraine. PO Gwinn grabbed the lower half of both of § 87(2)(b) legs with two hands, and both PO Gwinn and § 87(2)(b) fell to the ground. To PO Gwinn's knowledge, § 87(2)(b) fell to the ground solely because PO Gwinn grabbed his legs. While on the ground, PO Gwinn maintained his grip on § 87(2)(b) legs to keep him on the ground and tried to avoid being kicked in the face by § 87(2)(b). Because of how PO Gwinn was oriented on the ground in relation to § 87(2)(b) leg, PO Gwinn could not see what the other officers were doing. PO Gwinn did not see other officers using force against § 87(2)(b) and otherwise had no knowledge of officers using force against § 87(2)(b) at this point in the interaction.

PO Efinger, PO Jainaraine, and PO Ohman provided testimony § 87(2)(g) in which they denied that any officer punched or kicked

§ 87(2)(b) while he was on the ground (Board Review 23-25). In his interview, PO Efinger characterized § 87(2)(b) attempt at fleeing in handcuffs as “not even a little bit successful,” and stated that he did not present any significant physical resistance after being taken to the ground.

As noted above, PO Efinger, PO Harsch, PO Gwinn and PO Ohman prepared TRI reports regarding this incident (Board Review 17). PO Efinger’s and PO Harsch’s reports indicate that the officers used no force against § 87(2)(b) while PO Ohman and PO Gwinn’s TRIs both note that they used a forcible takedown against § 87(2)(b).

Body-worn camera footage depicts § 87(2)(b) attempting to flee while handcuffed in a manner consistent with PO Gwinn’s account. A split-screen compilation of PO Gwinn’s and PO Ohman’s BWC depicting this may be reviewed at Board Review 16. While PO Jainarine (beginning at 03:57 minutes, Board Review 08) PO Ohman (at 03:50 minutes, Board Review 10), PO Gwinn (at 04:18 minutes, Board Review 06) and PO Harsch (at 01:55 minutes in his second video, Board Review 07) all captured this portion of the incident using their body-worn cameras, the footage is too dark to disclose whether officers punched or kicked § 87(2)(b). PO Efinger’s body-worn camera had fallen off prior to this part of the incident, and thus did not produce responsive footage.

§ 87(2)(b) medical records note that he was removed to § 87(2)(b) from the 103rd Precinct complaining of pain to his left hip (Board Review 20). Both § 87(2)(b) CCRB statement and his statements to medical personnel are consistent in attributing the alleged injury to an officer twisting § 87(2)(b) leg while placing him inside a police vehicle, which aggravated a previous injury § 87(2)(b) received from falling off a ladder § 87(2)(b). No other injuries or complaints are noted in § 87(2)(b) medical records.

Because PO Gwinn and PO Ohman both prepared TRI paperwork indicating that they used forcible take-downs against § 87(2)(b) Allegations B and C have been pleaded against them.

Because the body-worn camera footage filmed by PO Jainarine, PO Gwinn, and PO Harsch indicates that these officers did not punch or kick § 87(2)(b) while he was on the ground, no allegations have been pleaded against them regarding this alleged force. Because the body-worn camera footage is ambiguous as to whether PO Efinger and PO Ohman punched or kicked § 87(2)(b) Allegations D and E have been pleaded against them.

Patrol Guide Section 221-02 prohibits the use of force “on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault” (Board Review 28).

§ 87(2)(g)
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§ 87(2)(g)

[REDACTED]

Allegation (F) Discourtesy: At § 87(2)(b) in Queens, officers spoke discourteously to § 87(2)(b)

Allegation (G) Discourtesy: At § 87(2)(b) in Queens, Police Officer Kevin Gwinn spoke discourteously to § 87(2)(b)

Body-worn camera footage depicts multiple unidentified officers using profanity upon § 87(2)(b) attempting to flee in handcuffs. These statements, which include, “Fuck,” and “Stupid motherfucker,” may be heard beginning at 04:18 minutes in PO Gwinn’s BWC (Board Review 06). At 05:34 minutes in the same footage, after § 87(2)(b) is apprehended and states, “Alright, dude get the fuck off me,” PO Gwinn can be heard stating, “No, shut the fuck up” (Board Review 06).

In his CCRB interview, PO Gwinn affirmed that he made this statement to § 87(2)(b) (Board Review 27).

Patrol Guide Section 203-10 instructs officers to treat civilians with courtesy and respect (Board Review 29).

In Disciplinary Case No. 2017-17005, the Deputy Commissioner of Trials noted that it has consistently held that “profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct” (Board Review 30). For instance, in Case No. 2014-11644 (cited in the aforementioned case), the DCT held that even if an officer told a prisoner to “shut up and mind your fucking business” while attempting to help another officer who was wrestling on the ground of the holding cell with another prisoner, this did not constitute actionable misconduct.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation (H) Discourtesy: At the 115th Precinct stationhouse, Sergeant Brian Lee spoke discourteously to § 87(2)(b)

At 05:08 minutes in PO Jainaraine's second BWC video, Sgt. Lee can be heard stating that § 87(2)(b) "jump[ed] his fucking cuffs" (Board Review 14).

In a phone call dated December 18, 2019, SPAA Tucker of the 103rd Precinct stated that Sgt. Lee has resigned from service. A request to confirm Sgt. Lee's resignation from service was submitted to the Department Advocate's Office on the same date and is currently pending.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first CCRB complaint (Board Review 31).
- PO Efinger has been a member of service for four years. In that time he has been the subject four allegations in three additional cases, none of which were substantiated § 87(2)(g)
- PO Gwinn has been a member of service for five years. In that time he has been the subject three allegations in two additional cases, none of which were substantiated § 87(2)(g)
- PO Ohman has been a member of service for three years. In that time he has been the subject two allegations in one additional case, none of which were substantiated § 87(2)(g)
- PO Jainaraine has been a member of service for three years. In that time he has been the subject two allegations in one additional case, none of which were substantiated § 87(2)(g)
- Sgt. Lee was a member of service for seven years. In that time, he was the subject of six allegations in two other cases, none of which were substantiated § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.

- § 87(2)(b) has filed a notice of claim regarding this incident for a total of \$11,000,000 (Board Review 21).
- § 87(2)(b) pleaded guilty to disorderly conduct pursuant to this incident § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date